

City of Tempe Draft Zoning and Development Code
(First Half)

PART 1 – INTRODUCTION

Chapter 1 – Organization

Chapter 2 – General Provisions

Chapter 3 – Officers, Boards and Commissions

CHAPTER 1 – ORGANIZATION

Section 1-101 Title.

Section 1-102 Authority. Purpose and Scope.

Section 1-103 How to Use the Zoning and Development Code.

Section 1-101 Title.

This Code shall be known and may be cited as the “Zoning and Development Code of the City of Tempe” ~~(this “Code”). (ZDC).~~

Section 1-102 Authority. Purpose and Scope

A. Authority. The authority for this Code is Arizona Revised Statutes (ARS) Section 9-462 et seq, which provides for the regulation of land and land use by municipalities in Arizona.

BA. Purpose and Intent. This Code is adopted to implement Tempe’s General Plan and to promote: public health, safety, convenience, aesthetics and welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decisionmaking; and effective and efficient ~~in~~ development review and land use administration.

CB. Scope. Consistent with the above purpose and intent, this Code: ~~establishes~~ land use classifications; creates zoning districts; establishes ~~imposes~~ regulations, prohibitions and restrictions on land use and development; governs the use of land for residential and non-residential purposes; regulates ~~and limits~~ the height and bulk of buildings and other structures; ~~limits~~ regulates lot occupancy and the size of yards and other open spaces; establishes standards of performance and design; adopts a map of the zoning districts; creates boards and commissions for land use and development decisions and defines the powers and duties of the boards and commissions; prescribes procedures for ~~changes of districts~~ amendments to the zoning map, use permits, development plan and land division approvals, variances and other permits; prescribes penalties for violations of the Code; ~~and repeals Ord. No. 808 and all conflicting regulations.~~

State law reference: A.R.S. 9-462.01, Zoning regulations; public hearing; definitions.

Section 1-103 How to Use the Zoning and Development Code.

~~This Code~~ ~~The City of Tempe Zoning and Development Code (“this Code”)~~ governs land use and development within the incorporated limits of the City of Tempe. The seven parts of the Code, the Zoning Map and Appendix are used together in the review of land use and development applications, enforcement of zoning and land use regulations, and implementation of the Tempe General Plan. They are organized as follows:

A. Part 1 – Introduction and General Provisions. In addition to this chapter (Chapter 1 – Organization), Part 1 provides information on the legal construction of the Code, enforcement, general provisions (Chapter 2), and information on city officers, boards and commissions (Chapter 3).

B. Part 2 – Establish Zoning Districts. Part 2 identifies the city's zoning (land use) districts. Every parcel, lot, and tract of land within the city's incorporated boundaries is located within a zoning district, as depicted on the City of Tempe Zoning Map. Four general types of districts are provided: Residential, Commercial, Mixed-Use, and Office/Industrial. Further divisions within each category provide a range of low to high-density development. Overlay districts are provided for special situations and/or distinct geographic areas.

C. Part 3 – Land Use. Part 3 indicates the land uses that are permitted within each zoning district and provides standards for specific types of land uses. The Code is intended to implement the vision and policies of Tempe's General Plan by reserving land for planned land uses, providing compatibility between different types of uses, and integrating land use and transportation planning.

D. Part 4 – Development Standards. Part 4 provides standards for housing density; design; building height, bulk and setbacks; vehicle and bicycle parking; landscapes; access and circulation for pedestrians and vehicles; signs; lighting; and transportation demand management.

E. Part 5 – Overlay Districts. Part 5 contains the city's overlay zoning districts. Overlay zones in Tempe include the following: Rio Salado Overlay District, Southwest Tempe Overlay District, and Light Industrial Overlay District. The geographic boundaries of these areas are shown on the zoning map.

F. Part 6 – Administration and Process. Part 6 provides all of the application requirements and procedures for obtaining approvals required by this Code.

G. Part 7 – Definitions. Part 7 provides definitions for certain terms and words used in this Code.

H. Zoning Map. The location and boundaries of the use districts are established as they are shown on a map, entitled "The Zoning Map of the City of Tempe," (the "Zoning Map") and amendments thereto adopted after the effective date of these regulations, which map and amendments are hereby declared to be a part of this ordinance.

Where uncertainty exists as to the boundaries of any of the zoning districts shown on the Zoning Map, the following rules shall apply. Where more than one of the following rules are applicable in any given situation, the first enumerated applicable rule shall prevail:

1. Where a district boundary line is shown by a specific dimension, such specific dimension shall control.

2. Where a district boundary line is located within or along a street, alley, right-of-way or channelized waterway, the district boundary line shall be deemed to be inclusive to the centerline of such street, alley, right-of-way or channelized waterway or extensions thereof or therefrom.

3. Where a district boundary line is shown as approximately following platted lot lines, the district boundary line shall be deemed to coincide with such platted lot lines.

(H. Zoning Map was located to Section 2-106 and then we added a new Section 2-107, with the intent of providing zoning map pages of the city.)

I. Index. An index is provided to easily reference key terms and phrases.

J. Appendix. The Appendix contains a fee schedule, and various administrative rules and guidelines, as may be adopted and updated from time to time by the city departments and divisions. The administrative rules and guidelines provide guidance and direction to applicants,

property owners, and city staff; they are not Code standards, although Code standards and approval criteria may refer to these rules and guidelines.

K. Construction. ~~Unless the context clearly indicates the contrary, the following shall be interpreted as follows:~~

~~1. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular.~~

~~2. The word "shall" is mandatory and not permissive.~~

~~3. The word "person" includes individuals, partnerships, corporations, clubs, or associations.~~

~~4. "And" indicates that all connected words or provisions shall apply.~~

~~5. "Or" indicates that the connected words or provisions may apply singly or in any combination.~~

~~6. "Either . . . or" indicates that the connected words or provisions shall apply singly but not in combination.~~

~~7. Part, chapter and section references refer to parts, chapters and sections of this Code, unless otherwise specifically stated to the contrary.~~

CHAPTER 2 – GENERAL PROVISIONS

Section 1-201 Violations and Penalties.

Section 1-202 Repeal, Saving Clause and Application.

Section 1-203 Compliance and Scope.

Section 1-204 Consistency with General Plan.

Section 1-205 Use of Real Property.

Section 1-206 Pre-Existing Approvals (Grandfathered Approval).

Section 1-207 Building Permit and Certificate of Occupancy.

Section 1-208 Official Action.

Section 1-209 Fractions Measurement.

Section 1-210 Interpretation.

Section 1-201 Violations and Penalties.

A. Violations. It is ~~unlawful a violation~~ to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, alteration, change, maintenance or use of any house, building, structure, sign, landscape area, parking lot, or fence, or to use or permit the use of any lot or other land contrary to, or in violation of any of the provisions of this Code. Any land use that is specifically prohibited by this Code, or is unspecified and not classified by the Zoning Administrator, is prohibited in any district.

B. Number of Offenses. Every such person, firm or corporation shall be deemed responsible or guilty of a separate offense for each and every day during which any violation is committed or continued. ~~(deleted, firm or corporation)~~

C. ~~Property Owner is~~ Responsible Party. The ~~Responsible Party is any~~ owner or person in possession of any property, ~~used in violation of this Code~~ The Responsible Party shall be responsible for any violation thereof, whether or not ~~he or she or his or her~~ the designated agent has committed the prohibited act or acts or has neglected to prevent the performance of the prohibited act or acts by another person.

D. Penalty. Any person, ~~firm or corporation~~ violating any of the provisions of this Code and any amendments thereto shall be either:

1. Subject to a civil fine sanction of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1000); or

2. Guilty of a class 1 misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars (\$2500), or by a term of probation not exceeding three (3) years or imprisonment for a term not exceeding six (6) months, or punishable by a combination of fine, probation or imprisonment. The city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court for violation of this chapterCode.

E. Commencement of Civil Action, Citation, Contents.

1. Unless otherwise specified, all civil actions for violations of this Code, which are designated as subject to civil sanction or penalty, shall be commenced by delivering a citation to the person responsible for the violation. The citation shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed within fourteen (14) days after issuance of the citation. The form shall contain a schedule of fines and penalties. The citation shall be served by delivering a copy to the defendant by any of the following means:

a. By service upon the defendant;

b. By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail;

c. By posting the citation on the property where the violation has occurred; or

d. By any of the methods described in rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.

2. The citation shall contain the date and location of the violation, reference to the Code section or provision violated, and notice that within fourteen (14) days from the date on which the citation was issued the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court; and

3. The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as may be established by this Code for the defendant's failure to appear.

F. Appearance; Payment by Mail.

1. The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in paragraph 2 below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing of the matter;

2. The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check or money order made payable to the Tempe Municipal Court. If admitting the allegation, the defendant may also pay the fine by credit card as prescribed by the court. If payment is not received by the court date provided on the citation, a default judgment will be entered; or

3. Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in paragraph 1 above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.

G. Default Judgment; Collection of Judgments.

1. In addition to any civil sanction imposed, the city court shall assess a default fee of not less than fifty dollars (\$50), unless another amount is specified in the Tempe City Code, for:

a. Each default judgment entered upon a failure of the defendant to appear for any civil violation, unless such default judgment is set aside under Rule 28 of the Rules of Procedure in Civil Traffic Violation Cases; or

b. A failure to pay any civil sanction imposed by the court.

2. A judge or hearing officer may waive all or part of the default fee if the payment of the fee would cause a financial hardship to the defendant;

3. No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation; and

4. The court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. Any judgment for civil sanction pursuant to this article may be collected as any other civil judgment.

H. Rules of Procedure and Appeal. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Tempe Municipal Court for civil citations issued pursuant to this Code, except as modified or where inconsistent with the provisions of the Zoning and Development Code or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.

Section 1-202 Repeal, Saving Clause and Application.

A. Repeal. All Codes or parts of Codes in conflict herewith are hereby repealed, including but not limited to, Ord. No. 808, the “Zoning Ordinance of the City of Tempe, Arizona,” and all amendments thereto. All rights or remedies of the City of Tempe are expressly saved as to any and all violations of such repealed ordinance, and all amendments thereto. Courts of competent jurisdiction shall have all the powers that existed prior to the effective date of this ordinanceCode as to all violations that have accrued at the time of the effective date of this ordinanceCode. All existing violations of the “Zoning Ordinance of the City of Tempe, Arizona,” Ordinance No. 808, and all amendments thereto, which may otherwise become nonconforming uses under this ordinance, shall not become legal nonconforming uses, but shall be considered as violations of this ordinance in the same manner that they were violations of the “Zoning Ordinance of the City of Tempe, Arizona,” Ordinance No. 808, and all amendments thereto.

B. Saving Clause. Should any section or provision of this Code be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Code as a whole, or any part thereof other than the part so decided to be unconstitutional or invalid.

C. Application. The repeal of the Codes or parts thereof by this Code shall not:

1. Affect suits pending or rights existing immediately prior to the effective date of this Code;

2. Impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any such repealed Code or amendment thereto; or

3. Affect or impair the validity of any bond or other obligation issued or sold and constituting a valid obligation of the issuing authority immediately prior to the effective date of this Code.

Section 1-203 Compliance and Scope.

A. Compliance. Land and structures may be used or developed by construction, reconstruction, alteration, occupancy, use or otherwise, only as allowed in this Code. No plat shall be recorded or no building permit shall be issued without compliance with the provisions of this Code.

B. Obligation by Successor. The requirements of this Code apply to the owner(s) of record, persons undertaking the development or use of land, and to those persons' successors in interest.

C. Most Restrictive Regulations Apply. Where this Code imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.

D. Variances. Variances shall be governed by the provisions of Section 6-310.

E. Transfer of Development Standards Prohibited. No lot area, yard, landscape, open space, off-street parking or loading area, or other feature which is required by this Code for one use shall be a required lot area, yard, landscape, open space, or offstreet parking or loading area for another use, except as otherwise specifically allowed by this Code.

Section 1-204 ~~Consistency-Conformance~~ with General Plan. All development, uses, and district changes in the City of Tempe shall be ~~consistent in conformance~~ with the Tempe General Plan as implemented by this Code. All provisions of this Code shall be construed in conformity with the adopted General Plan, and any amendments which may be approved by the City from time to time.

State law reference: A.R.S. 9-462.01(F), Zoning regulations; public hearing; definitions.

Section 1-205 Use of Real Property. Land shall be used only for lawful uses. A lawful use is one that is permitted by this Code and is not prohibited by law. Part 3, Land Use, sets forth the uses permitted by this Code.

Section 1-206 Pre-Existing Approvals (Grandfathered Approval).

A. Legality of Pre-Existing Approvals. Developments and uses for which approvals were lawfully granted prior to the effective date of this Code, may occur pursuant to such approvals.

B. Subsequent Applications. All applications for uses, development, and permits received by the city after [the effective date], including modifications processed under Section 6-313, shall conform to the provisions of this Code.

Section 1-207 Building Permit and Certificate of Occupancy.

A. Building Permit. A building permit shall not be issued until the Development Services Department has determined that the proposal complies with all of the applicable land use and development standards contained in this Code, with the exception of pre-existing approvals pursuant to Section 1-206(A).

B. Certificate of Occupancy. To ensure completion of a building in the manner approved by the city, the building shall not be occupied and a use shall not begin until the Development Services Department has issued a certificate of occupancy.

C. Prior to Final Completion. Prior to the final completion of all work, a certificate of occupancy may be issued for a portion of the structure conditioned upon further work being completed by a date certain and guaranteed, as applicable.

Section 1-208 Official Action.

A. Official Action. All officials, departments, divisions, and employees of the city vested with authority to issue permits or grant approvals shall adhere to and require conformance with this Code.

B. Notice. The failure of any person to receive mailed notice or failure to post a notice shall not invalidate any actions pursuant to this Code, except as otherwise determined by the City Attorney.

Section 1-209 Fractions Measurement. Fractions equal to or greater than five-tenths (5/10) of a whole number shall be rounded up to the next whole number.

Section 1-210 Interpretation. Unless the context clearly indicates the contrary, the following shall be interpreted as follows:

1. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular.

2. The word "shall" is mandatory and not permissive.

3. The word "person" includes individuals, partnerships, corporations, clubs, or associations.

4. "And" indicates that all connected words or provisions shall apply.

5. "Or" indicates that the connected words or provisions may apply singly or in any combination.

6. "Either . . . or" indicates that the connected words or provisions shall apply singly but not in combination.

7. Part, chapter and section references refer to parts, chapters and sections of this Code, unless otherwise specifically stated to the contrary.

(use the existing definition of "person" for this section)

CHAPTER 3 – OFFICERS, BOARDS AND COMMISSIONS

Section 1-301 Purpose.

Section 1-302 Development Services Manager and Zoning Administrator.

(agreed to separate DSM and ZA)

Section 1-309 Special Review Commissions/Committees

Section 1-303 Hearing Officer.

Section 1-304 Board of Adjustment.

Section 1-305 Planning and Zoning Commission.

Section 1-306 Redevelopment Review Commission.

Section 1-307 Design Review Board.

Section 1-308 City Council.

Section 1-301 Purpose. This Chapter sets forth the purpose, duties, organization, and powers of the city boards, commissions, and other bodies charged in making decisions under this Code created for the purpose of conserving and promoting the public health, safety and general welfare, and aiding in the harmonious, orderly, and progressive development of the City. For a complete description of the decision making procedures ~~they follow, please~~ refer to Part 6, Chapter 1, Approval and Appeal Authorities.

(added, "Creation and" to the title.)

Section 1-302 Development Services Manager and Zoning Administrator.

A. Development Services Manager.

1. Development Services Manager - Duties and Powers. The Development Services Manager shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Development Services Manager shall have the power to Administratively review and approve, continue, deny, or approve with conditions the following:

a) ~~Minor Development Plan applications; or Major amendments to conditions of approval to Development Plan applications pursuant to Sections 6-307 and 6-313;~~

b) Minor modification to approved Development Plans or Minor modification to conditions of approval to Development Plans pursuant to Sections 6-307 and 6-313;

c) ~~Minor modification to approved Site Plans or Minor modification to approved conditions of approved Site Plans pursuant to Section 6-_____;~~

d) Minor modification to approved Planned Area Development Overlays or Minor modification to conditions of approval to Planned Area Development Overlays pursuant to Sections 6-_____ and 6-_____;

~~e) Lot Split Applications pursuant to Chapter 30 of the City Code;~~

~~f) Sign permit applications pursuant to Section 4-904;~~

~~g) Time extension applications pursuant to Section 6-901; and~~

~~h) Other administrative requests in accordance with Part 6.~~

(added Shared Parking which is consistent with Part 6 language.)

2. Development Services Manager - Appeals. Any person, entity, or group aggrieved by a decision of the Development Services Manager under this Code may file an appeal within 14 calendar days after the Development Services Manager has ~~rendered~~ provided a written notice with their decision, in accordance with Part 6, Chapter 8, Appeals.

3. Development Services Manager - Reconsideration. Reconsideration of Development Services Manager decisions shall comply with Part 6, Chapter 7 herein.

BA. Zoning Administrator

1. Zoning Administrator – ~~Creation~~ed and Purpose. The Zoning Administrator is the ~~of Development Services Manager~~ or his or her designee. ~~He or she~~ The Zoning Administrator is charged with the responsibility of is created to interprets the meaning and intent of this Code ~~in for the purpose of making decisions and recommendations on applications.~~

State law reference: A.R.S. 9-462.05 Enforcement. (Zoning Administrator creation).

B2. Zoning Administrator – Duties and Powers. The Zoning Administrator shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Zoning Administrator ~~is charged with the responsibility of~~ shall have the power to interpretation and enforcement of this Code. and hear shared parking applications.

(modified the above to reflect other Duties and Powers paragraph and deleted shared parking.)

a) Interpretation of this Code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this Code, the delegation of processing procedures and requirements, and enforcement of Code provisions. The Zoning

Administrator shall keep a record of interpretations made pursuant to this section. The record of interpretations shall be available to the public.

b) The Zoning Administrator may appoint representatives of the Development Services Department to enforce provisions of this Code.

c) Any land use that is unspecified in this Code and not classified by the Zoning Administrator is prohibited in any district.

3. Zoning Administrator - Appeals. ~~Appeals from the determinations of the Zoning Administrator may shall be taken to the Board of Adjustment Any person, entity, or group aggrieved by a decision of the Zoning Administrator under this Code may file an appeal to the Board of Adjustment, Planning and Zoning Commission or the Redevelopment Review Commission, as applicable, in conformance with the procedures in Section 6-800 of this Code within 14 calendar days after the Zoning Administrator has rendered its decision, in accordance with Part 6, Chapter 8.~~ Appeals from the determinations of the Zoning Administrator may be taken to the Board of Adjustment.

4. Zoning Administrator - Reconsideration. Reconsideration of Zoning Administrator decisions shall comply with Part 6, Chapter 7 herein.

Section 1-303 Hearing Officer.

A. Hearing Officer – Creation^{ed} and Purpose. ~~The Hearing Officer hereafter called “HO”-shall be appointed by the City Attorney~~ Development Services Manager or his or her designee. ~~The Hearing Officer HO is created to~~ conducts Ppublic Hhearings on specific applications and interprets this Code in making decisions on applications as noted in Section 1-303 B below.

~~(Deleted “applications” for consistency.)~~

B. Hearing Officer – Duties and Powers. ~~The Hearing Officer shall have the duty to carry out the provisions and intent of the General Plan and this Code. The HO has the power to review applications and approve, continue, deny, or approve with conditions variances and use permits. The HO also hears appeals regarding the rental housing code and abatements under Tempe City Code. The Hearing Officer is charged with shall have the following duties and power: shall have the power to hold a Public Hearing to review and approve, continue, deny or approve with conditions the following applications:~~

~~1. Hear requests for use permits and variances, as determined by the Development Services Manager, and as provided Use permit applications pursuant to in Section 6-309; and Section 6-310; and~~

~~2. Variance applications pursuant to Section 6-310; and~~

~~3. Rental Housing Code appeals pursuant to Chapter 21 of the Tempe City Code; and~~

~~4. Abatement appeals pursuant to Chapter 21 of the Tempe City Code and Section 6-311. (modified)~~

~~3.~~

~~The Hearing Officer may, Prescribe in connection with any use permit or variance such conditions as in connection with any application, impose conditions as it deems necessary to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6 per Section 6-600 Conditions of Approval. Violation of any HO Hearing Officer condition shall be a violation of this Code.~~

~~(Kept titles with the Part and Chapter, for consistency.)~~

C. Hearing Officer – ~~Organization~~Procedure. ~~Meetings~~ Public Hearings conducted by ~~of the HO~~ Hearing Officer shall be open to the public and shall be conducted per the standards in accordance with Part 6, Chapter 5, ~~Public Meetings and Public Hearings.~~ The HO will ask if ~~there are public comments on each agenda item, and t~~he public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings, ~~and records of the HO's examinations and other official actions,~~ shall be kept and filed with~~by~~ the City Clerk in accordance with Section 6-503 as a public record.

D. Hearing Officer – Appeals. Any person, entity, or group aggrieved by a decision of the Hearing Officer under this Code may file an appeal to the Board of Adjustment, or the Redevelopment Review Commission as applicable, within 14 calendar days after the Hearing Officer has rendered its decision, in accordance with Part 6, Chapter 8. Appeals of the decisions of the ~~HO~~ Hearing Officer shall be heard de novo by the Board of Adjustment, or the Redevelopment Review Commission as applicable, ~~in conformance with the procedures in Section 6-800 of this Code.~~

(DELETED "ENTITY OR GROUP")

State law reference: A.R.S. §9-462.08 ~~Hearing officer,s in cities, established, appointment, A.R.S. §9-462.08.~~

Section 1-304 Board of Adjustment.

A. Board of Adjustment – ~~Creation~~ed and Purpose. The Board of Adjustment, ~~hereafter called "BA,"~~ is created to hold Public Hearings, as noted in Section 1-304 B below, to provide relief from the terms of this Code, and to hear applications, and to hear and decide appeals from decisions of the Hearing Officer or Zoning Administrator.

State law reference: A.R.S. 9-462.06(A) Board of adjustment (creation).
~~See A.R.S 9-4 for appeals of Board of Adjustment decisions.~~

B. Board of Adjustment – Duties and Powers. The Board of Adjustment shall have the duty to carry out the provisions and intent of this Code. The BA Board of Adjustment shall have the power to hold Public Hearings to review and approve, continue, deny, or approve with conditions, applications for variances and use permits in accordance with Section 6-309 and 6-310, and interprets this Code in hearing and deciding variances, and hearing and deciding appeals from decisions of the zoning administrative hearing officer Hearing Officer or Zoning Administrator. The Board of Adjustment holds concurrent jurisdiction with the Redevelopment Review Commission in accordance with Section 1-306.

1. The BA Board of Adjustment shall hold a Public Hearing to review and approve, continue, deny, or approve with conditions the following:

~~1. Hear appeals from any decision made by the zoning administrative hearing officer;~~
~~2. Hear appeals when there is an alleged error in a decision made by the Zoning Administrator in the interpretation and enforcement of this Code; and~~

~~3a) Hear requests for uUse permits applications pursuant to Section 6-309;~~
~~b) and vVariances applications pursuant to Section 6-310; as determined by the Development Services Manager, and as provided in Section 6-309 and Section 6-310 of this Code, and approve, deny, or approve applications with revisions and conditions.~~

~~c) Hear aAppeals from any decision made by the zoning administrative hearing officerHearing Officer regarding abatements, code interpretations, and shared parking requests;~~

and (REMOVED REDUNDANT LANGUAGE WITHIN B.1 AND DELETED VARIANCES ARE USE PERMITS. BofA IS AN APPEAL BODY ONLY.)

d) Hear a~~Appeals~~ when there is an alleged error in a~~from any~~ decision made by the Zoning Administrator ~~in the interpretation and enforcement of this Code.~~

2. The Board of Adjustment shall not:

a) Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

b) Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

3. The~~BA Board of Adjustment~~ may, in connection with any ~~variance application~~, impose conditions as it deems necessary to fully carry out the provisions and intent of this Code pursuant to Part 6, Chapter 6. Violation of any BA Board of Adjustment condition shall be a violation of this Code.

(DELETED THE WORD ARTICLE AND ADDED "CODE")

State law reference: A.R.S. 9-462.06(H). Board of adjustment.

C. Board of Adjustment – Organization.

II of the "Organization" section distinguish b "members" and "alternates"

1. The~~BA Board of Adjustment~~ shall consist of seven (7) members and two (2) alternates appointed by the Mayor and confirmed by City Council. The alternates shall serve at the board meetings or hearings whenever regular board members are unable to attend or must decline due to conflict of interest. ~~Each member~~All Board of Adjustment members and alternates shall be ~~a residents~~ of the city at all times during their terms. The members of the BA Board of Adjustment shall be appointed for three (3) year terms, unless sooner removed by the council, and their terms shall be staggered so that the terms of at least two (2), but not more than three (3) members, conclude in any given year. Nothing herein shall affect the expiration of the current terms of the BA Board of Adjustment. Vacancies for ~~the an~~ unexpired term of a member or alternate shall be filled by the Mayor with City Council approval. The members and alternates of the BA Board of Adjustment shall serve without compensation.

(MODIFIED THE ABOVE LANGUAGE TO PROVIDE A CONSISTENT LANGUAGE THAT IS FOUND IN MOST OF OUR ADMINISTRATIONS ORGANIZATION. DELETED, "CONFIRMED BY COUNCIL AND ADDED, "APPROVED BY THE COUNCIL". "RESIDENTS OF THE CITY" IS APPROPRIATE FOR IDENTIFYING RESIDENCY. CHANGES ABOVE ARE TYPICAL THROUGHOUT OTHER ORGANIZATIONS IN THIS CODE.)

23. The~~BA Board of Adjustment~~ shall elect a chairperson and vice-chairperson from among its own members who shall have power to administer oaths, take evidence, and set consent agendas. ~~Elected officers shall serve from the first meeting of the Board of Adjustment following the first day of January of each year and until the 31st day of December of the same year. The chairperson shall appoint the chair and membership of all subcommittees of this Board.~~

34. Hearings of the~~BA Board of Adjustment~~ shall be open to the public ~~and conducted per the standards in accordance with Part 6, Chapter 5, Public Meetings and Public Hearings. The chair will ask if there are public comments on each agenda item, and~~ The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings, showing the vote of each member, ~~and~~ records of the board's¹ examinations and other official actions, shall be kept ~~and filed with~~ by the City Clerk in accordance with Section 6-503 as a public record.

45. The ~~BA Board of Adjustment~~ shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.

56. A quorum consists of four (4) members of the ~~BA Board of Adjustment~~. The concurring vote of four (4) members of the ~~BA Board of Adjustment~~ shall be necessary ~~required~~ to ~~approve, continue, deny, or approve with conditions on~~ act on any application any matter on its agenda except that consent agenda items may be approved or continuances administratively granted as provided for in this section. ~~In the event that Board members are not sufficiently available to make a quorum. In such case, a staff member~~ are is authorized to act as an alternate members on consent agenda items only, and only to the extent that their presence makes a quorum. ~~to reverse any order or decision of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass, or to affect any variation from the terms and conditions of this Code. Any other motion shall be governed by Robert's Rules of Order. Robert's Rules of Order shall govern any other motion.~~

(CLARIFIED THAT ONE STAFF MEMBER CAN ACT ON CONSENT AGENDA ITEMS. TYPICAL.)

67. The Development Services Manager, or ~~his or her~~a designated representative, shall serve ex officio as the secretary of the ~~BA Board of Adjustment~~.

~~8. Whenever members are either unable to attend or must decline due to conflict of interest, they shall give timely notice to the appropriate staff person of the Development Services Department. The staff shall then notify the alternate BA members to fill any vacancy. In the event that such members are not sufficiently available to make a quorum, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum.~~

~~7. An city attorney appointed by the City Attorney shall attend each hearing of the Board of Adjustment to provide the Board of Adjustment members and alternates and city staff with legal advice regarding procedure, motions and conditions.~~

D. Board of Adjustment – Appeals. Any person, entity, or group aggrieved by a decision of the Board of Adjustment under this Code may file an appeal to the Maricopa County Superior Court within 30 calendar days after the Board has rendered its decision, in accordance with Part 6, Chapter 8. Appeals to BA decisions shall be to Maricopa County Superior Court in conformance with Section 6-803 of this Code.

State law reference: A.R.S. 9-462.06(K) Board of Adjustment (appeal of decisions). See A.R.S. 9-462.06 for appeals of Board of Adjustment decisions.

E. Board of Adjustment - Reconsideration. Reconsideration of Board of Adjustment decisions shall comply with Part 6, Chapter 7. (TYPICAL. ADDED NAME OF CHAPTER.)

Section 1-305 Planning and Zoning Commission.

A. Planning and Zoning Commission – ~~Creation~~ed and Purpose. The Planning and Zoning Commission, ~~hereafter called “PZ,”~~ is created to hold Public Hearings to make decisions on Major Development Plans, Planned Area Developments, Use Permits and Variances, and provide analysis and recommendations to the City Council and to render final

decisions on specified development applications as noted in Section 1-305 B below. ~~the city's General Plan, re-zonings and Code amendments.~~ The purpose of the Planning and Zoning Commission ~~its purpose~~ is to review all aspects of a proposed and future development including, but not limited to, present and projected growth of the city, site planning and the relationship of the development to the surrounding environment and the community. The Planning and Zoning Commission assists the City Council with advice and recommendations regarding general land use policies and applications where the Commission has recommendatory power, and to render final decisions on specified applications where the Commission has final decisionmaking power, as described below. The Planning and Zoning Commission ~~PZ~~ recognizes the interdependence of land values, aesthetics and good site planning by promoting harmonious, safe, attractive and compatible development, that is therefore considered to be in the best interest of health, safety and general welfare.

City code reference - See TCC §25-16 et seq., establishing Planning and Zoning Commission, setting officers, meetings, powers and duties.

State law reference - A.R.S. 9-461.02. Planning commission; creation; limitations.

B. Planning and Zoning Commission – Duties and Powers. The Planning and Zoning Commission shall have the duty to carry In-carrying out the provisions and intent of the General Plan and this Code. The Planning and Zoning Commission has concurrent jurisdiction with the Redevelopment Review Commission in accordance with Section 1-306 and Table 6-101A.

1. ~~¶~~The Planning and Zoning Commission ~~PZ~~ shall have the following powers to:

Final Decisionmaking Powers: The Planning and Zoning Commission shall have the power to hold Public Hearings to review and make final decisions regarding the approval, continuance, denial, or approval with conditions of the following requests:

- a)- Use Permit applications pursuant to Section 6-309;
- b)- Site Plan applications pursuant to Section 6-307;
- bc)- Major Modification to approved Site Plan or Major Modification to approved conditions of approved Site Plan applications pursuant to Section 6-307; and
- de)- Preliminary Subdivision Plats pursuant to Section 6-308;
- e) Appeals from the Development Services Manager regarding Minor modifications to approved Planned Area Developments, or Minor modifications to conditions of approved Planned Area Developments; and
- f) Appeals from the Development Services Manager regarding Minor modifications to approved Site Plans, or Minor modifications to conditions of approved Site Plans.

(DELETED APPEALS FROM DSM REGARDING MINOR PAD CONDITIONS.)

Recommendation Powers: The Planning and Zoning Commission shall have the power to hold Public Hearings to review and recommend to the City Council approval, continuance, denial, or approval with conditions the following requests:

- a)- General Plan amendment and Major General Plan amendment applications pursuant to Section 6-303;
- b)- Zoning Map amendment (re-zoning), overlay district and PAD applications pursuant to Sections 6-305 and 6-306;
- c)- Code Text amendment applications pursuant to Section 6-305;
- d)- Final Subdivision Plat applications pursuant to Section 6-308; and
- e)- Historic Preservation applications pursuant to § 14A-4 of the City Code; Section ??????; and

f) Major modifications to approved Planned Area Developments, or Major modifications to conditions of approved Planned Area Developments pursuant to Sections 6- and 6-

Hear requests for subdivisions, amendments to the General Plan, or Code text or district zoning map, and recommend approval, denial or approval with revisions and conditions upon such requests to the City Council;

~~2. Hear requests for Use Permits, Variances, Development Plans, and Planned Area Developments, as determined by the Development Services Manager, and as provided in Section 6-309 and Section 6-310 of this Code, and approve, deny, or approve them with revisions and conditions.~~

2. The Planning and Zoning Commission may prescribe in connection with any application such conditions as the Planning and Zoning Commission may deem necessary in order to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6. Violation of any Planning and Zoning Commission PZ condition shall be a violation of this Code.

C. Planning and Zoning Commission – Organization.

1. The Planning and Zoning Commission PZ shall consist of seven (7) members and two (2) alternates appointed by the Mayor with the approval of the City Council. The alternates shall serve at the Commission hearings whenever a regular board member is unable to attend or must decline due to conflict of interest. All Planning and Zoning Commission PZ members and alternates shall be residents of the city at all times during their terms, and shall be appointed by the Mayor with the approval of the City Council. The members of the Planning and Zoning Commission PZ shall serve be appointed for three (3) year terms, unless sooner removed by the council, and their terms shall be staggered so that the terms of at least two (2), but not more than three (3) members conclude in any given year. Nothing herein shall affect the expiration of the current terms of the Planning and Zoning Commission PZ. Any Vacancies for an unexpired term of a member or alternate shall be filled by the Mayor, with City Council approval, for the unexpired term. The members and alternates of the Planning and Zoning Commission PZ shall serve without compensation.

23. The Planning and Zoning Commission PZ shall elect a chairperson and vice-chairperson from among its own members who shall have power to administer oaths, take evidence, and set consent agendas. Elected officers shall serve from the first meeting of the Board of Adjustment following the first day of January of each year until the 31st day of December of the same year. The chairperson shall appoint the chair and membership of all subcommittees of this Commission.

(THE ABOVE REDLINES WERE VOTED OUT. TYPICAL.)

34. Hearings of the Planning and Zoning Commission PZ shall be open to the public and conducted per the standards in accordance with Part 6, Chapter 5, Public Meetings and Public Hearings. The chair will ask if there are public comments on each agenda item, and the The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings, showing the vote of each member, and records of the board's Commission's examinations and other official actions, shall be kept and filed with by the City Clerk in accordance with Section 6-503 as a public record.

45. The Planning and Zoning Commission PZ shall adopt rules of procedure consistent with the provisions of this Code for the conduct of its business and procedure.

~~56. A quorum consists of four (4) members of the Planning and Zoning Commission PZ. The concurring vote of four (4) members of the Planning and Zoning Commission PZ shall be necessary to continue or recommend approval denial or approval with conditions, or make a recommendation act on any application matter on its agenda except that consent agenda items may be approved and continuances administratively granted as provided for in this section. In the event that Planning and Zoning Commission members are not sufficiently available to make a quorum. In such case, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum. Any other motion shall be governed by Robert's Rules of Order Robert's Rules of Order shall govern any other motion.~~

~~67. The Development Services Manager, or his or her designated representative, shall serve ex officio as secretary of the Commission PZ.~~

~~8. Whenever a member is either unable to attend or must decline due to conflict of interest, that member shall give timely notice to the appropriate staff person of the Development Services Department. The staff shall then notify the alternate PZ member to serve. In the event that such members are not sufficiently available to make a quorum, staff are authorized to act as members on consent agenda items only, and only to the extent that their presence makes a quorum.~~

D. Planning and Zoning Commission – Appeals. Appeals of PZ

1. Appeal of Final Commission Decision:

~~Any person, entity, or group aggrieved by a final decision of the Planning and Zoning Commission regarding a final decision rendered by the Planning and Zoning Commission pursuant to Section 1-305(B)(1) may file an appeal to the City Council within 14 calendar days after the Planning and Zoning Commission has rendered its decision, in accordance with Part 6, Chapter 8. decisions shall be heard by City Council in conformance with the procedures in Section 6-803 of this Code~~

2. Appeal of Commission Recommendation:

~~Planning and Zoning Commission decisions regarding recommendations rendered to the City Council pursuant to Section 1-305(B)(1) are not final decisions but are recommendations made to the City Council. Any person, entity, or group aggrieved by a recommendation of the Planning and Zoning Commission need not file a formal appeal to the City Council, but shall notify the Development Services Manager in writing of their appeal of the Planning and Zoning Commission recommendation and the reasons for such appeal. Staff shall transmit the written notice of appeal of the Planning and Zoning Commission recommendation to the City Council for final action.~~

E. Planning and Zoning Commission - Reconsideration. Reconsideration of Planning and Zoning Commission decisions shall comply with Part 6, Chapter 7.